

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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ROBERT BEHR,

Case No. 14-CV-3269 (PJS/FLN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

TOM ROY, MINNESOTA  
COMMISSIONER OF CORRECTIONS,  
individual capacity,

Defendant.

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Plaintiff Robert Behr, a Minnesota state prisoner, commenced this action by filing a complaint seeking relief for alleged violations of his constitutional rights. *See* ECF No. 1. He did not pay the required filing fee for this case. Instead, Behr filed an application seeking leave to proceed *in forma pauperis* (“IFP”). *See* ECF No. 2. In an order dated September 4, 2014, this Court informed Behr that he would be required to pay a partial initial filing fee of \$8.80 within 20 days of the date of that order, failing which this Court would recommend that this case be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. *See* ECF No. 3.

That deadline has now passed, and Behr has not paid the required partial initial filing fee. Indeed, Behr has not communicated with this Court at all since initiating this lawsuit. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district

court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order."").

#### RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS  
HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. Plaintiff Robert Behr's application to proceed *in forma pauperis* [ECF No. 2] be DENIED AS MOOT.

Dated: October 6, 2014

s/Franklin L. Noel  
Franklin L. Noel  
United States Magistrate Judge

#### NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **October 21, 2014**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Eighth Circuit Court of Appeals.